CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

SECOND SECTION

CASE OF EVT COMPANY v. SERBIA

(Application no. 3102/05)

JUDGMENT

STRASBOURG

21 June 2007

FINAL

21/09/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of EVT Company v. Serbia,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Mrs F. TULKENS, *President,*
Mr A.B. BAKA,
Mr I. CABRAL BARRETO,
Mr V. ZAGREBELSKY,
Mrs A. MULARONI,
Ms D. JOČIENĖ,
Mr D. POPOVIĆ, *judges,*
Mr M. UGREKHELIDZE, *substitute judge,*

and Mrs S. DOLLÉ, *Section Registrar,*

Having deliberated in private on 31 May 2007,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 3102/05) against the State Union of Serbia and Montenegro, succeeded by Serbia on 3 June 2006 (see paragraph 32 below), lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"), by the EVT Company ("the applicant") on 31 December 2004.

2. The applicant, who had been granted legal aid, was represented before the Court by Mr M. Živković, a lawyer practising in Leskovac. The Government of the State Union of Serbia and Montenegro, initially, and the Government of Serbia, subsequently, ("the Government") were represented by their Agent, Mr S. Carić.

3. On 24 November 2005 the Court decided to communicate the application to the Government. Under Article 29 § 3 of the Convention, it was also decided that the merits of the application would be examined together with its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. On 7 May 1996 the Commercial Court in Leskovac (*Privredni sud u Leskovcu*) ordered "Jedinstvo", a company based in Lebane, to hand over 87,480 kilograms of common salt to the applicant, and pay its legal costs in the amount of 2,850 Yugoslav Dinars ("YUD").

6. This judgment became final by 8 June 1996.

7. On 21 June 1996 the applicant filed an enforcement request in respect of the judgment.

8. On 24 June 1996 the Commercial Court in Leskovac ("the Commercial Court") issued an enforcement order against the respondent company ("the debtor").

9. On 17 October 1996 the Commercial Court adopted a decision stating that the debtor could not deliver the specified amount of common salt and, instead, ordered it to pay to the applicant YUD 218,700.

10. In the meantime, the debtor was transformed into four separate companies - "Holding Jedinstvo", "Caričin grad" and "8. novembar", all based in Lebane, and "Agrar" based in Bošnjaca ("the debtors").

11. On 21 December 1998 the Commercial Court ordered the debtors to pay the applicant YUD 218,700 with statutory interest as of 30 October 1996, plus another YUD 4,850 for legal costs, and ruled that they had jointly assumed the financial obligations of the initial debtor.

12. On 12 February 1999 and 17 September 1999, the Commercial Court and the High Commercial Court in Belgrade (*Viši privredni sud u Beogradu*), respectively, rejected the debtors' requests for a stay of the enforcement proceedings.

13. On 23 December 1999 the applicant filed a submission with the Commercial Court, seeking the expedition of these proceedings.

14. Mr Marko Momčilović subsequently became the applicant's owner and authorised representative.

15. Throughout this time and during the years that followed, the applicant proposed different means of enforcement, including bank account seizures as well as the auctioning of the debtors' movable and, if needed, immovable assets. It emphasised that, where appropriate, police assistance should be sought.

16. On 11 July 2001, 25 March 2002 and 14 November 2002, respectively, the applicant filed requests to this effect with the Commercial Court and urged that the proceedings be expedited.

17. On 21 February 2004 the applicant sent a complaint, by post, to the Court of Serbia and Montenegro, stating, *inter alia*, that the debtors still had sufficient assets to pay their outstanding obligation, as the Commercial Court would have otherwise been "only too glad" to declare the enforcement impossible ("*sud bi [inače] jedva [do]čekao da [to] konstatuje i obavesti nas kako je nemoguće sprovesti izvršenje*"). This complaint, however, appears not to have reached the Court of Serbia and Montenegro.

18. By 18 March 2004 the debtors paid the applicant a total of 838,148.06 Serbian Dinars, the domestic currency having been renamed in the meantime.

19. On 22 November 2004 and 30 November 2004 the applicant complained to the Commercial Court, on 15 December 2004 to the High Commercial Court in Belgrade, and on 2 July 2001 and 15 December 2004 to the Supreme Court of Serbia (*Vrhovni sud Srbije*), respectively.

20. On 21 January 2005 the President of the Commercial Court informed the applicant that the enforcement proceedings had been hindered by the debtors' employees as well as the police. While the former physically prevented the bailiffs from conducting an inventory of the debtors' movable assets, on several separate occasions, the latter refused to assist the bailiffs in their subsequent attempts to seize those very assets. The President further noted that the most recent refusal of the police to assist the bailiffs occurred on 18 November 2004, which is why the enforcement had to be postponed. Finally, he stated that the proceedings would recommence as soon as the judge handling the case clarified the situation with the head of the local police, and concluded that the refusal of the police to assist the bailiffs in their duties was common in cases involving "discontented workers" engaged in the obstruction of judicial enforcement proceedings.

II. RELEVANT DOMESTIC LAW

A. Enforcement Procedure Act 2000 (Zakon o izvršnom postupku; published in the Official Gazette of the Federal Republic of Yugoslavia - OG FRY - no. 28/00, 73/00 and 71/01)

21. Article 4 § 1 provides that the enforcement court is obliged to proceed urgently.

22. Under Article 47, if need be, bailiffs may request police assistance. Should the police fail to provide such assistance, the enforcement court shall inform the Minister of Internal Affairs, the Government, or the competent parliamentary body of this failure.

B. Enforcement Procedure Act 2004 (Zakon o izvršnom postupku; published in the Official Gazette of the Republic of Serbia - OG RS - no. 125/04)

23. This Act entered into force on 23 February 2005, thereby repealing the Enforcement Procedure Act 2000. In accordance with Article 304, however, all enforcement proceedings instituted prior to 23 February 2005 are to be concluded pursuant to the Enforcement Procedure Act 2000.

C. Statutory Interest Act (Zakon o visini stope zatezne kamate; published in OG FRY no. 9/01)

24. Article 1 provides that statutory interest shall be paid as of the date of maturity of a recognised monetary claim until the date of its settlement (which includes awards granted by final court judgments).

25. Article 2 states that such interest shall be calculated on the basis of the official retail price index (*mesečna stopa rasta cena na malo*) plus another 0.5% monthly (*mesečna fiksna stopa*).

D. Insolvency Procedure Act (Zakon o stečajnom postupku; published in OG RS no. 84/04)

26. Article 40 §§ 1-3 provides, *inter alia*, that judicial insolvency proceedings may be instituted by a company's creditor, providing that it can substantiate its claim and document that the debtor in question cannot otherwise cover its outstanding obligations.

E. Financial Transactions Act (Zakon o platnom prometu; published in OG FRY nos. 3/02 and 5/03, and OG RS nos. 43/04 and 62/06)

27. Under Article 54 § 1, *inter alia*, the Serbian Central Bank (*Narodna banka Srbije*) shall monitor the solvency of all corporate entities and initiate judicial insolvency proceedings in respect of those whose bank accounts have been "blocked" due to outstanding debts for a period of 60 days consecutively, or for 60 days intermittently, within the last 75 days.

F. Judges Act (Zakon o sudijama; published in OG RS nos. 63/01, 42/02, 60/02, 17/03, 25/03, 27/03, 29/04, 61/05 and 101/05)

28. The relevant provisions of this Act read as follows:

Article 40a §§ 1 and 2

"The Supreme Court of Serbia shall set up a Supervisory Board ["*Nadzorni odbor*"] ("the Board").

This Board shall be composed of five Supreme Court judges elected for a period of four years by the plenary session of the Supreme Court of Serbia."

Article 40b

"In response to a complaint or *ex officio*, the Board is authorised to oversee judicial proceedings and look into the conduct of individual cases.

Following the conclusion of this process, the Board may initiate, before the High Personnel Council, proceedings for the removal of a judge based on his unconscientious or unprofessional conduct, or propose the imposition of other disciplinary measures."

G. Criminal Code 1977 (Krivični zakon Republike Srbije; published OG RS nos. 26/77, 28/77, 43/77, 20/79, 24/84, 39/86, 51/87, 6/89, 42/89, 21/90, 16/90, 26/91, 75/91, 9/92, 49/92, 51/92, 23/93, 67/93, 47/94, 17/95, 44/98, 10/02, 11/02, 80/02, 39/03 and 67/03)

29. Articles 213, 242, 243 and 245 of this Code incriminate "obstruction of an official in the performance of his or her duties" (*sprečavanje službenog lica u vršenju službene dužnosti*), "abuse of office" (*zloupotreba službenog položaja*), "judicial malfeasance" (*kršenje zakona od strane sudije*) and "official malfeasance" (*nesavestan rad u službi*), respectively.

H. Criminal Code 2005 (Krivični zakonik; published in OG RS nos. 85/05, 88/05 and 107/05)

30. Article 340 incriminates "non-enforcement of a court decision" (*neizvršenje sudske odluke*).

31. This Code entered into force on 1 January 2006, thereby repealing the Criminal Code 1977.

I. Relevant provisions concerning the Court of Serbia and Montenegro and the succession of the State Union of Serbia and Montenegro

32. The relevant provisions concerning the Court of Serbia and Montenegro and the succession of the State Union of Serbia and Montenegro are set out in the *Matijašević v. Serbia* judgment (no. 23037/04, §§ 12, 13 and 16-25, 19 September 2006).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1

33. The applicant complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 about the non-enforcement of the final judgment

rendered in its favour on 7 May 1996. The relevant provisions of these Articles read as follows:

Article 6 § 1

"In the determination of his [or her] civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal..."

Article 1 of Protocol No. 1

"Every natural or legal person is entitled to the peaceful enjoyment of his [or her] possessions. No one shall be deprived of his [or her] possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. Admissibility

1. Arguments of the parties

34. The Government submitted that the applicant had not exhausted all available, effective domestic remedies. In particular, it had failed to lodge a complaint under Article 47 of the Enforcement Procedure Act 2000 and to complain about the delay in question to the Supreme Court's Supervisory Board (see paragraphs 22 and 28 above). Further, the applicant had not made use of the complaint procedure before the Court of Serbia and Montenegro, pursuant to the Constitutional Charter and the Charter on Human and Minority Rights and Civic Freedoms (see paragraph 32 above). Finally, the Government maintained that the applicant had failed to lodge a criminal complaint under Articles 213, 242, 243 and 245 of the Criminal Code 1977 or a complaint under Article 340 of the Criminal Code 2005 (see paragraphs 29-31 above).

35. The applicant stated that it had complied with the exhaustion requirement contained in Article 35 § 1 of the Convention. In particular, it had filed a complaint with the Court of Serbia and Montenegro on 21 February 2004, even though this court was never functional. Further, it had no right under law to directly lodge a complaint with the Supreme Court's Supervisory Board. Finally, as regards Article 47 of the Enforcement Procedure Act 2000, the applicant pointed out that it was up to the enforcement court and its bailiffs to seek police assistance and inform the Ministry of Internal Affairs about the difficulties encountered.

2. Relevant principles

36. The Court recalls that, according to its established case-law, the purpose of the domestic remedies rule in Article 35 § 1 of the Convention is to afford the Contracting States the opportunity of preventing or putting right the violations alleged before they are submitted to the Court. However, the only remedies to be exhausted are those which are effective. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time (see, *inter alia*, *Vernillo v. France*, judgment of 20 February 1991, Series A no. 198, pp. 11–12, § 27, and *Dalia v. France*, judgment of 19 February 1998, *Reports of Judgments and Decisions* 1998-I, pp. 87-88, § 38). Once this burden of proof has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted, or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from this requirement (see *Dankevich v. Ukraine*, no. 40679/98, § 107, 29 April 2003).

37. The Court emphasises that the application of this rule must make due allowance for the context. Accordingly, it has recognised that Article 35 § 1 must be applied with some degree of flexibility and without excessive formalism (see, *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports* 1996-IV, p. 1211, § 69). It must examine whether, in all the circumstances of the case, the applicant did everything that could reasonably be expected in order to exhaust domestic remedies.

38. Finally, the Court reiterates that the decisive question in assessing the effectiveness of a remedy concerning a complaint about procedural delay is whether or not there is a possibility for the applicant to be provided with direct and speedy redress, rather than an indirect protection of the rights guaranteed under Article 6 (see, *mutatis mutandis*, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 195, ECHR 2006, and *Sürmeli v. Germany* [GC], no. 75529/01, § 101, 8 June 2006). In particular, a remedy of this sort shall be "effective" if it can be used either to expedite the proceedings at issue or to provide the litigant with adequate redress for delays which have already occurred (see, *mutatis mutandis*, *Kudła v. Poland* [GC], no. 30210/96, §§ 157-159, ECHR 2000-XI, *Mifsud v. France* (dec.), [GC], no. 57220/00, § 17, ECHR 2002-VIII, and *Sürmeli v. Germany* [GC], cited above, § 99).

3. The Court's assessment

39. The Court considers that a complaint with the Supreme Court's Supervisory Board to speed up the enforcement at issue, even if relevant and directly available to the applicant, would have amounted to no more than mere information submitted to a higher instance with full discretion to

make use of its powers as it saw fit (see paragraph 28 above). In addition, even if this board had instituted proceedings in response to the applicant's complaint, they would have taken place exclusively between the board itself and the judge/court concerned. The applicant would not have been a party to such proceedings and would, at best, have only been informed of their outcome (see, *mutatis mutandis*, *Horvat v. Croatia*, no. 51585/99, § 47, ECHR 2001-VIII). A complaint to the Supreme Court's Supervisory Board cannot therefore be considered effective within the meaning of Article 35 § 1 of the Convention.

40. As to Article 47 of the Enforcement Procedure Act 2000, the Court considers that it was indeed up to the respondent State's authorities, and not the applicant personally, to seek police assistance and inform the Ministry of Internal Affairs about the difficulties encountered (see paragraph 22 above). In any event, for its part, the applicant had repeatedly complained about the lack of police assistance to various State bodies but obtained no redress (see paragraphs 15, 16 and 19 above).

41. The Court further considers that a criminal complaint (see paragraphs 29-31 above) would have been just as ineffective as it would have been no faster than any other "ordinary" criminal matter which could have lasted for years and gone through several instances (see paragraph 38 above). The Government certainly offered no evidence to the contrary.

42. Finally, concerning the Government's submission that the applicant should have filed a complaint with the Court of Serbia and Montenegro, the Court recalls that it has already held that this particular remedy was unavailable until 15 July 2005 and, further, that it remained ineffective until the break up of the State Union of Serbia and Montenegro (see *Matijašević v. Serbia*, cited above, §§ 34-37). The Court sees no reason to depart in the present case from this finding and concludes, therefore, that the applicant was not obliged to exhaust this particular avenue of redress. The issue of why the applicant's complaint apparently never reached the Court of Serbia and Montenegro is thus irrelevant.

43. In view of the above, the Court concludes that the applicant's complaints cannot be declared inadmissible for non-exhaustion of domestic remedies under Article 35 § 1 of the Convention. Accordingly, the Government's objection in this respect must be dismissed. The Court also considers that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and finds no other ground to declare them inadmissible. The complaints must therefore be declared admissible.

B. Merits

1. Arguments of the parties

44. The Government noted that the respondent State had ratified the Convention and Protocol No. 1 to the Convention on 3 March 2004 and that the impugned enforcement proceedings have therefore been within this Court's jurisdiction *ratione temporis* for a period of approximately three years only. The domestic courts were diligent and the proceedings complex given that they "involved workers" whose opposition to the enforcement of the final judgment in question could have easily led to a riot, had the police accepted to intervene. Further, the transformation of a single debtor into four separate companies had in itself contributed to the duration of the proceedings at issue. Finally, the applicant cannot be considered to have been "deprived of its possession" given that the alleged deprivation was "not definitive" and the final judgment had been partly enforced (see paragraph 18 above).

45. The applicant stated that the enforcement proceedings have been pending since 1996, more than three years of which elapsed following the respondent State's ratification of the Convention and Protocol No. 1 to the Convention. They were not complex and the applicant's own conduct did not contribute to any delay. Further, the enforcement court itself did not take adequate steps to bring these proceedings to a successful and speedy conclusion. Finally, the applicant stressed that it has been deprived of its possessions as of 1996, when the Commercial Court's judgment became final and that this deprivation was thus "definitive".

2. Relevant principles

46. The Court recalls that it would be inconceivable that Article 6 § 1 should describe in detail procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without protecting the implementation of judicial decisions; to construe Article 6 as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention. Execution of a judgment given by a court must therefore be regarded as an integral part of the "trial" for the purposes of Article 6 (see *Hornsby v. Greece*, judgment of 19 March 1997, *Reports* 1997-II, p. 510, § 40).

47. A delay in the execution of a judgment may, however, be justified in particular circumstances but this delay may not be such as to impair the essence of the right protected under Article 6 § 1 (see *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 74, ECHR 1999-V).

48. Further, irrespective of whether a debtor is a private or a State actor, it is up to the State to take all necessary steps to enforce a final court judgment as well as to, in so doing, ensure effective participation of its entire apparatus, including the police, failing which it will fall short of the requirements contained in Article 6 § 1 (see, *mutatis mutandis*, *Pini and Others v. Romania*, nos. 78028/01 and 78030/01, §§ 174-189, ECHR 2004-V (extracts); see also *mutatis mutandis*, *Hornsby*, cited above, p. 511, § 41).

49. Finally, in terms of Article 1 of Protocol No. 1, the Court notes that a "claim" can constitute a "possession" if it is sufficiently established to be enforceable (see *Burdov v. Russia*, no. 59498/00, § 40, ECHR 2002-III) and reiterates that it is under this provision, as well as Article 6 § 1 of the Convention, that the State is obliged to make use of all available legal means at its disposal in order to enforce a final judgment, even in cases involving litigation between private parties (see, *mutatis mutandis*, *Fuklev v. Ukraine*, no. 71186/01, §§ 89-91, 7 June 2005; see also *Sovtransavto Holding v. Ukraine*, no. 48553/99, § 96, ECHR 2002-VII).

3. Period to be taken into account

50. The Court notes that the judgment of 7 May 1996, although final and enforceable as of June 1996, has yet to be fully executed. The impugned situation has thus already been ongoing for more than three years and two months since the ratification of the Convention and Protocol No. 1 by the respondent State on 3 March 2004 (the period which falls within this Court's jurisdiction *ratione temporis*).

51. The Court further observes that, in order to determine the reasonableness of the delay in question, regard must also be had to the state of the case on the date of ratification (see, *mutatis mutandis*, *Styranowski v. Poland*, judgment of 30 October 1998, *Reports* 1998-VIII) and notes that on 3 March 2004 the enforcement proceedings complained of had already been pending for a period of almost eight years.

4. The Court's assessment

52. The Court reiterates that the State has an obligation to organise a system of enforcement of judgments that is effective both in law and in practice and ensures their enforcement without undue delay (see *Fuklev v. Ukraine*, no. 71186/01, § 84, 7 June 2005, and *Mužević v. Croatia*, no. 39299/02, § 84, 16 November 2006). It must also make sure that the procedures provided for in the relevant domestic legislation are complied with (see *Fuklev v. Ukraine*, cited above, § 91).

53. The Court notes, as regards the present case, that the remaining part of the applicant's claim has not been enforced since 18 March 2004 and that the police expressly refused to assist the bailiffs on a number of occasions,

including on 18 November 2004, a fact apparently tolerated by the domestic authorities at that time as well as by the Government in the present proceedings (see paragraphs 20 and 44 above). Further, it would appear that there were no attempts to enforce the final judgment from then on, even though there is no evidence that this delay could be attributed the debtors' lack of means (see paragraphs 17, 26, 27 above and paragraph 59 below). Finally, there is also nothing to suggest that the enforcement proceedings have been particularly complex or, indeed, that the transformation of a single debtor into four separate companies had contributed to the delay of which the applicant complained (see paragraphs 11 and 12 above).

54. In such circumstances and irrespective of whether any of the debtors are State-owned or State-controlled companies (see paragraphs 48 and 49 above), the Court considers that the respondent State has clearly failed to effectively conduct the enforcement proceedings at issue (see *Fuklev v. Ukraine*, cited above, § 86). It therefore finds that the Serbian authorities have impaired the essence of the applicant's "right to a court" and prevented it from receiving the money which it had legitimately expected to receive. There has accordingly been a violation of Article 6 § 1 of the Convention and a separate violation of Article 1 of Protocol No. 1 (see *Kolyada v. Russia*, no. 31276/02, § 25, 30 November 2006).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

55. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

56. The applicant claimed EUR 300,000 for the pecuniary and non-pecuniary damages sustained due to the failure of the domestic authorities to fully enforce the final judgment rendered in its favour, which amount included compensation for the severe disruption of its business operations as well as the mental distress suffered by the applicant's owner (see paragraph 14 above). The applicant further submitted that, as a result of the respondent State's protracted inactivity, the debtors no longer had sufficient assets to cover the remainder of their outstanding obligations.

57. The Government contested these claims. They added that the remaining amount to be enforced was equivalent to approximately EUR 65,000 in Serbian Dinars, which included the accrued statutory interest, and

noted that any distress suffered by the applicant's owner was irrelevant given that he was not the applicant before the Court.

58. The Court accepts that the applicant has suffered some non-pecuniary damage which would not be sufficiently compensated by the finding of the violations alone (see, *mutatis mutandis*, *Comingersoll v. Portugal* [GC], no. 35382/97, §§ 35-37, ECHR 2000-IV, and *Teltronic-CATV v. Poland*, no. 48140/99, §§ 67, 68 and 60, 10 January 2006). Making its assessment on an equitable basis and having regard to the circumstances of the case, the Court awards the applicant EUR 2,500 under this head.

59. Concerning the pecuniary damage sought, the Court finds that there is no evidence that the debtors have insufficient assets to fully comply with the final judgment at issue (see paragraphs 17 and 53 above; see also, *mutatis mutandis*, *Mužević v. Croatia*, cited above, at § 85). Indeed, none of them appear to have been declared insolvent, either at the applicant's own initiative or by the State *ex officio* (see paragraphs 26 and 27 above). Finally, it is noted that statutory interest in Serbia covers inflation and contains an additional punitive element (see paragraphs 24 and 25 above).

60. The Court considers, therefore, that the applicant's claim for pecuniary damage must be met by the Government ensuring, by appropriate means, the full execution of the Commercial Court's final judgment of 7 May 1996, as modified by the enforcement orders of 17 October 1996 and 21 December 1998, respectively (see, *mutatis mutandis*, *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII; see also *Mužević v. Croatia*, cited above, § 91).

B. Costs and expenses

61. The applicant, who had received legal aid from the Council of Europe in connection with the presentation of his case, also claimed a total of EUR 9,489.84 for the costs and expenses incurred before the domestic courts as well as before this Court, and provided an itemised calculation in this respect.

62. The Government contested that claim.

63. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were also reasonable as to their quantum (see, for example, *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI).

64. Regard being had to all of the information in its possession and the above criteria, however, the Court considers it reasonable to award the applicant the sum of EUR 3,000 for the costs incurred domestically, in particular those undertaken with a view to expediting the proceedings complained of (see, *mutatis mutandis*, *Le Compte, Van Leuven and De Meyere v. Belgium*, judgment of 18 October 1982 (Article 50), Series A

no. 54, § 17; see also, *argumentum a contrario*, *O'Reilly and Others v. Ireland*, no. 54725/00, § 44, 29 July 2004).

65. Finally, given the amount granted under the Council of Europe's legal aid scheme, the Court rejects the applicant's claim for the costs incurred in the proceedings before it.

C. Default interest

66. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible.

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1;

3. *Holds*

(a) that the respondent State shall ensure, by appropriate means, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, the full execution of the Commercial Court's final judgment of 7 May 1996, as modified by the relevant enforcement orders;

(b) that the respondent State is to pay the applicant, within the same three month period, EUR 2,500 (two thousand five hundred euros) in respect of the non-pecuniary damage suffered, and EUR 3,000 (three thousand euros) for the costs incurred domestically, which sums are to be converted into the national currency of the respondent State at the rate applicable on the date of settlement, plus any tax that may be chargeable;

(c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 June 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ	F. TULKENS
Registrar	President